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Part V
Department of Housing and Urban Development

Office of Assistant Secretary for Housing—Federal Housing Commissioner

Flexible Subsidy Program; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 219

[Docket No. R-79-658]

Flexible Subsidy Program; Interim Rule

AGENCY: Department of Housing and Urban Development.

ACTION: Interim Rule.

SUMMARY: This interim rule amends Title 24 of the Code of Federal Regulations by adding a new Part 219 to Chapter II. Part 219 establishes policies and procedures for implementing the Flexible Subsidy Program for troubled multifamily projects pursuant to Section 201 (Operating Assistance for Troubled Multifamily Housing Projects) of the Housing and Community Development Amendments of 1978. The goals of this program are to:

(1) Reduce claims on the Department's insurance funds by aiding projects in financial distress where existing sources of financial relief are inadequate to cure the problems and restore financial soundness; and (2) to preserve and protect the existing supply of low- and moderate-income housing by upgrading the quality of management services and effecting physical and financial improvements which will enable the project to become self-sustaining and assure the long-term economic operation of the project. Assistance payments under this program may be used to correct physical deficiencies resulting from deferral of regular maintenance, to reduce deficiencies in replacement reserve funds and to fund project operating deficits.

EFFECTIVE DATE: June 19, 1979.

COMMENTS DUE: July 20, 1979.

ADDRESS: Comments should be submitted to the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. A copy of each communication will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Fred W. Pfaender, Acting Director, Office of Multifamily Housing Management and Occupancy, Housing, Department of Housing and Urban Development, Washington, D.C. 20410, (202) 755-5677.

SUPPLEMENTAL INFORMATION: The Flexible Subsidy Program was developed in response to the findings and recommendations of the Department's 1977/78 Task Force on Multifamily Property Utilization. The Task Force concluded that existing subsidies and loan servicing tools did not adequately address the full range of problems confronting multifamily projects. Under existing programs, the amount of subsidy is determined by factors other than total project needs (i.e., by the mortgage interest rate in the Section 236 and Section 221(d)(3) BMIR program and by tenant rent/income ratios in the Section 8, rent supplement, and RAP programs). Present subsidies do not provide lump sum cash payments for correction of deferred maintenance items that have accumulated because of the project's past inability to raise rents due to the low-income levels of the tenants. Tenants were already paying excessive percentages of their income for rent and tenant incomes were not increasing as rapidly as operating expenses. Similarly, present forms of financial relief (e.g., mortgage modifications, etc.) could not always generate assistance in the total amount or at the time it is needed.

Under the flexible Subsidy Program, the amount of assistance will be based upon an analysis of the project's total needs. Assistance payments may be used to correct physical deficiencies resulting from deferral of regular maintenance, to reduce deficiencies in replacement reserve funds and to fund operating deficits, thereby holding rents at a level which tenants can afford to pay with a reasonable percentage of their incomes. Contracts will be written for one-year periods and payments will be released at least quarterly. Because both the initial allocation and continued receipt of assistance will be conditioned upon the project owner's ability to provide for management satisfactory to HUD, the Flexible Subsidy Program should provide project owners with an incentive for continuing management improvements.

The Flexible Subsidy Program will provide a major tool for stabilizing conditions in existing subsidized housing projects by providing assistance to restore financial and physical soundness, to upgrade management and maintain their low and moderate income character. This program enables the Department to address the major problems of distressed projects which have been found to lead to mortgage defaults assignments and foreclosures. Because many projects will be stabilized under this program, the Department should realize significant savings to the insurance funds as a result of the reduction in the number of claims. Due to the identified need for this type of assistance, and the inadequacy of other available resources to address such need, HUD has determined that the public interest would be served by making these provisions effective on an interim basis. Publication as an interim rule is necessary to make the program operational within the time frames established by HUD in order to meet the Congressional objectives of Section 201 of the Housing and Urban Development Amendments of 1978 on an expedited basis.

The Department has determined that an Environmental Impact Statement is not required with respect to this rule. The Finding on Inapplicability in accordance with HUD's environmental procedures (HUD Handbook 1390.1), is available for inspection at the Office of the Rules Docket Clerk, at the above address.

PART 219—FLEXIBLE SUBSIDY PROGRAM

Accordingly, a new Part 219 is added to read as follows:

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Authority: Sec. 201(g) of the Housing and Community Development Amendments of 1978, 12 U.S.C. 17152-1.

§219.101 Purpose.

The purposes of the Flexible Subsidy Program are to provide assistance to restore or maintain the financial soundness, to assist in the improvement of management and to maintain the low- to moderate-income character of certain projects assisted or approved for assistance under the National Housing Act of under the Housing and Urban Development Act of 1965.

§ 219.105 Eligible projects.

A rental or cooperative housing project is eligible for assistance only if the project:

(a) Is assisted under Section 236 or the proviso of Section 221(d)(5) of the National Housing Act, or under Section 101 of Housing and Urban Development Act of 1965, except that assistance may not be provided before October 1, 1979,

for any such projects which are not insured under the National Housing Act, or

(b) Met above criteria before acquisition by the Secretary and has been sold by the Secretary subject to a mortgage insured or held by the Secretary and subject to an agreement (in effect during the period of assistance under this part) which provides that the low- and moderate-income character of the project will be maintained; except that with respect to projects sold after October 1, 1978, assistance shall not exceed a three-year period.

§ 219.110 Conditions for approval.

(a) Assistance may not be made available unless it has been determined by the Secretary that:

(1) This assistance, when considered with other resources available to the project is necessary and will restore or maintain the financial soundness and maintain the low- and moderate-income character of the project. Other resources include but are not limited to modification agreements, owner contributions, Section 223 or 241 loan programs.

(2) This assistance will be less costly to the Federal Government over the useful life of the project than other reasonable alternatives by which the Secretary could maintain the low- and moderate-income character of the project;

(3) The project owner, together with the mortgagee in the case of projects not insured under the National Housing Act, has provided or agreed to provide assistance to the project in a manner as determined by the Secretary.

(4) The project is or can be reasonably made structurally sound, as determined from information resulting from an on-site inspection of the project;

(5) Project management is being conducted by persons who meet satisfactory levels of competency and experience as prescribed by the Secretary; and

(6) The project is being operated and managed in accordance with a management-improvement-and-operating plan which is designed to reduce the operating costs of the project. The plan which has been approved by the Secretary shall include the following:

(i) A detailed maintenance schedule; (ii) a schedule for correcting past deficiencies in maintenance, repairs and replacements; (iii) a plan to upgrade the project to meet cost effective energy efficiency standards prescribed by the Secretary; (iv) a plan to improve financial and management control systems; (v) a detailed annual operating budget taking into account such standards for operating costs in the area as may be determined by the Secretary; and (vi) a plan setting forth the specific controls and procedures which will result in a reduction in operating costs together with an estimate of the cost saving.

(b) The field office shall give funding priority to projects presently experiencing financial and management problems in which conditions can be stabilized by assistance under this part. To the extent that funds remain available, assistance may be provided to projects with potential problems which, on the basis of a financial and management analysis, appear to have a high probability of having such financial and management problems within approximately the next five years consistent with the requirements set forth in paragraph (a) of this section.

§ 219.115 Local government assurances.

Prior to making assistance available to a project, the Secretary shall consult with the appropriate officials of the unit of local government in which such project is located and seek assurances that:

(a) the community in which the project is located is or will provde essential services to the project in keeping with the community's general level of these services;

(b) the real estate taxes on the project are or will be no greater than would be the case if the property were assessed in a manner consistent with normal property assessment procedures for the community; and

(c) assistance to the project under this part would not be inconsistent with local plans and priorities.

§ 219.120 Use and amount of assistance.

Assistance shall be provided in any amount which the Secretary determines is consistent with the project's management-improvement and-operating plan, subject to the availability of funds appropriated by the Congress in annual appropriation acts. Assistance will not exceed the sum of:

(a) An amount determined by the Secretary to be necessary to correct project deficiencies existing at the beginning of the first year of assistance, which were caused by the deferral of regularly scheduled maintenance and repairs or the failure to make necessary and timely replacements of equipment and other components of the project, and for which payment has not previously been made. Any project deficiencies which require capital improvements are eligible for funding only if: (1) They are necessary to meet local building codes or to maintain the project in a decent, safe, and sanitary condition, and (2) such expenditure is necessary and the most efficient method to make the improvement.

(b) An amount determined by the Secretary to be necessary to maintain the low- and moderate-income character of the project by reducing deficiencies, existing at the beginning of the first year of such assistance and for which payment has not previously been made, in the reserve funds established by the project owner for the purpose of replacing capital items; and

(c) An amount not greater than the amount by which the estimated operating expenses for the year of such assistance, exceeds the estimated revenues to be received by the project during such year.

§ 219.125 Estimating project revenue and operating expenses.

(a) Computing Estimated Project Revenue. The estimated revenues for any project with respect to any year shall be equal to the sum of:

(1) The estimated amount of rent which is to be expended by the tenants of such project during such year, as determined by the Secretary, without regard to whether the mortgagor has established and is collecting a basic rent in accordance with the formula set forth in Section 236(f)(1) of the National Housing Act;

(i) The estimated amount of rent to be expended by tenants, shall include: (A) The rent being paid or projected to be paid at the time project revenue is estimated, but at least 25 percent (or such lesser percentage as is provided under other Federal housing assistance programs in which such tenant is a participant) of the income of each such tenant, whichever is greater, or (B) in the case of a tenant paying his or her own utilities, a percentage of income which is less than 25 percent and which takes into account the reasonable costs of such utilities, except that no amount shall be provided for any Section 236 tenant which is in excess of the fair market rental charge. The tenant contribution computation can be based on the most recent tenant income certification.

(ii) In computing the estimated amount of rent to be expended by tenants and the estimated amount of assistance payments to be made on behalf of such tenants, the Secretary may permit a vacancy allowance of not more than 6 percent of the estimated amount of such rent and payment computed, without

regard to such allowance, except that with respect to the first three years, in which assistance is provided to a project, the Secretary may permit such allowance for such project to exceed 6 percent by an amount which the Secretary determines is appropriate to carry out the purposes of this part.

(2) The estimated amount of assistance payments to be made on behalf of such tenants during such year, other than assistance made under this part;

(3) The estimated amount of assistance payments to be made on behalf of the project owner under the proviso of Section 221(d)(5) or Section 236 during such year; and

(4) Other income attributable to the project as determined by the Secretary.

(b) Computing Estimated Project Operating Expenses. The estimated operating expenses of any project with respect to any year, shall include all estimated operating costs which the Secretary determines to be necessary and consistent with the management-improvement-and operating-plan for the project for such year, including but not limited to taxes, utilities, maintenance and repairs (except for maintenance and repairs which should have been performed in previous years), management, insurance, debt service, and payments made by the owner for the purpose of establishing or maintaining a reserve fund for replacement costs. The estimated operating expenses may not include any return on the equity investment of the owner. In order to carry out the purposes of this program, in establishing a rental charge, there may be excluded from the cost of operating a project, an amount equivalent to the amount of assistance payments made for the project under this Part.

§ 219.130 Payment schedule.

Assistance payments shall be computed on an annual basis, payable at such intervals as prescribed by the Secretary, but at least quarterly, in an amount determined by the Secretary, except that the sum of such assistance payments for any year may not exceed the amount computed pursuant to § 219.120. At the time of the payments, the operations of the project shall be reviewed by the Secretary to determine that such operations are consistent with the management-improvement and-operating plan. Continued assistance shall be contingent upon satisfactory performance.

§ 219.135 Waivers.

Basic Provision. Upon determination of good cause, the Secretary of Housing and Urban Development may, subject to statutory limitations, waive any provision of this part. Each such waiver shall be in writing and shall be supported by documentation of the pertinent facts and grounds.

(Sec. 201(g), Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z-1))

Issued at Washington, D.C., March 8, 1979.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA/FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
CSA	MSPB*/OPM*		CSA	MSPB*/OPM*
	LABOR			LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

*NOTE: As of January 1, 1979, the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM) will publish on the Tuesday/Friday schedule. (MSPB and OPM are successor agencies to the Civil Service Commission.)

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

Rules Going Into Effect Today

FEDERAL COMMUNICATIONS COMMISSION

FM broadcast stations, changes in table of assignments—

22740 4-17-79 / Yucca Valley, Calif.

22741 7-17-79 / Pinconning, Mich.

22741, 25231 4-17-79, 4-30-79 / Gouverneur and Ogdenburg, N.Y.

22078 4-13-79 / Anadarko, Okla. and Memphis, Tenn.

Television broadcast stations, changes in table of assignments—

22742, 22743 4-17-79 / Salem, Ore. and Tomah, Wisc.

FEDERAL RESERVE SYSTEM

23813 4-23-79 / Definition of creditor

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Housing Commissioner—

23515 4-20-79 / Debenture interest rates; retroactive to 1-1-79

TRANSPORTATION DEPARTMENT

Coast Guard—

23218 4-19-79 / Portland, Maine; drawbridge operations

Materials Transportation Bureau—

23225 4-19-79 / Shipment of hazardous materials by water

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last Listing May 14, 1979

Just Released

CODE OF FEDERAL REGULATIONS

(Revised as of January 1, 1979)

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_____	Title 7—Agriculture (Parts 900 to 944)	$5.25	$_____
_____	Title 7—Agriculture (Parts 981 to 999)	3.75	_____
_____	Title 7—Agriculture (Parts 2853 to End)	4.50	_____
_____	Title 7—Agriculture (Parts 1000 to 1059)	6.00	_____
_____	Title 16—Commercial Practices (Parts 150 to 999)	5.00	_____
		Total Order	$_____

[A Cumulative checklist of CFR issuances for 1978 appears in the first issue of the Federal Register each month under Title 1. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected)]

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